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3 **UNITED STATES DISTRICT COURT**  
4 **DISTRICT OF NEVADA**

5 \* \* \*

6 SAEID SAM KANGARLOU,

7 Plaintiff,

8 v.

9 ALTON AL LOCKLEAR, et al.,

10 Defendants.  
11

Case No. 2:18-cv-02286-JAD-BNW

**SCREENING ORDER**

12 Pro se plaintiff Saeid Sam Kangarlou brings this lawsuit for personal injuries he suffered  
13 resulting from an alleged attack that occurred while he was playing a slot machine at The Mirage  
14 Hotel and Casino in Las Vegas, Nevada. Kangarlou submitted the affidavit required by 28 U.S.C.  
15 § 1915(a) showing an inability to prepay fees or costs or give security for them. Accordingly, the  
16 court will grant his request to proceed *in forma pauperis*. The court now screens Kangarlou's  
17 complaint.

18 **I. ANALYSIS**

19 **A. Screening standard**

20 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint  
21 under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable  
22 claims and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may  
23 be granted or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. §  
24 1915(e)(2). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for  
25 failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668  
26 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain sufficient  
27 factual matter, accepted as true, to state a claim to relief that is plausible on its face." *See*  
28 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes pro se complaints and

1 may only dismiss them “if it appears beyond doubt that the plaintiff can prove no set of facts in  
2 support of his claim which would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908  
3 (9th Cir. 2014) (quoting *Iqbal*, 556 U.S. at 678).

4 In considering whether the complaint is sufficient to state a claim, all allegations of  
5 material fact are taken as true and construed in the light most favorable to the plaintiff. *Wylar*  
6 *Summit P’ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted).  
7 Although the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff  
8 must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S.  
9 544, 555 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.*  
10 Unless it is clear the complaint’s deficiencies could not be cured through amendment, a pro se  
11 plaintiff should be given leave to amend the complaint with notice regarding the complaint’s  
12 deficiencies. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

### 13 **B. Screening the complaint**

14 Kangarlou alleges that on December 5, 2016, after using the spa at the Mirage, he played a  
15 “bubble craps machine” in the casino from approximately 7:00 p.m. to 11:55 p.m. (Compl. (ECF  
16 No. 1-2) at 3.) Kangarlou did not consume any alcohol that day. (*Id.*) Kangarlou further alleges  
17 that at approximately 11:00 p.m., defendant Alton Al Locklear joined the game. (*Id.*) Locklear  
18 had a drink in his hand when he began playing and ordered several alcoholic drinks while playing  
19 the game. (*Id.*)

20 Kangarlou states that Locklear “kept losing money and inserted more \$100 bills” into the  
21 slot machine, becoming “frustrated and furious for losing.” (*Id.*) Locklear was using profanity,  
22 and when Kangarlou asked him to stop out of respect for the women who were present, Locklear  
23 allegedly continued cursing and made derogatory remarks to Kangarlou. (*Id.* at 3-4.) After a  
24 woman left the machine, Locklear allegedly became aggressive, blamed Kangarlou for his losses,  
25 and threatened to physically harm Kangarlou. (*Id.* at 4.) Kangarlou felt threatened and stood to  
26 look for security or a slot supervisor to intervene. (*Id.*) Kangarlou describes the situation that  
27 unfolded as follows:  
28

1 . . . before [Kangarlou could] locat[e] a casino staff [member], Locklear walked  
2 over and without warning socked [Kangarlou] on the right side of his face close to  
3 his temple. [Kangarlou] lost control and was pushed to the floor hitting his right  
4 knee to some object. Locklear mounted [Kangarlou's] back and kept punching  
[Kangarlou] in the head repeatedly with intent to kill [Kangarlou]. At no time did  
Locklear intend to stop as Mirage patrons told him "stop, that is enough." At one  
point someone stopped Locklear.

5 (*Id.*) Mirage security intervened and detained Locklear. (*Id.*)

6 Kangarlou suffered injuries to his face, head, hands, knee, back, tooth, ribs, stomach, and  
7 chest. (*Id.*) His vision was blurry following the attack. (*Id.*) Mirage security administered first  
8 aid and summonsed paramedics. (*Id.*) Paramedics transported Kangarlou to the emergency  
9 room, where he was treated by an emergency room physician and diagnostic imaging was  
10 performed in the emergency room. (*Id.*) He was referred to an ophthalmologist and has been  
11 evaluated by several eye specialists in hope of repairing his lost vision. (*Id.*) Kangarlou states he  
12 currently is under the care of a neuro-ophthalmologist. (*Id.*) Kangarlou also does physical  
13 therapy for his back and spine and is under the care of a neurosurgeon and may need surgery. (*Id.*  
14 at 4-5.) Kangarlou's medical bills exceed \$40,000 and are growing. (*Id.* at 5.) Kangarlou also  
15 alleges the incident has caused him to suffer depression, sleep disturbances, mood swings, weight  
16 gain, and loss of self-esteem. (*Id.*) Kangarlou is under the treatment of a therapist for emotional  
17 distress. (*Id.*)

18 While at the emergency room, Kangarlou was interviewed by two police officers. (*Id.* at  
19 4.) According to Kangarlou, the police officers informed him that casino video surveillance  
20 corroborated Kangarlou's version of the incident. (*Id.*) Kangarlou states that Locklear  
21 subsequently was arrested, charged with battery, pleaded guilty, and paid a fine. (*Id.*)

22 Locklear allegedly was in Las Vegas on the date of the incident because he was attending  
23 the 2016 National American Indian Housing Council's annual symposium that was held at the  
24 Mirage from December 5-7, 2016. (*Id.* at 3.) Kangarlou alleges Locklear was representing the  
25 Lumbee Tribe of North Carolina, which operates under several corporate entities including  
26 Lumbee Land Development, Inc. and Lumbee Tribe Holdings, Inc. (*Id.*) Kangarlou further  
27 alleges the tribe paid Locklear's expenses for the trip to Las Vegas. (*Id.* at 5.) Kangarlou states  
28 that after the incident, two representatives of the tribe contacted him seeking information about

1 the incident and offering to assist with his medical expenses, but they were “just phishing for  
2 information and were acting in bad-faith.” (*Id.*) Kangarlou contends “Locklear has had a history  
3 of violence, aggression, false representation and intoxication as reported by the newspapers and  
4 citizens of Roberson County, North Carolina.” (*Id.*)

5 Kangarlou now sues Locklear for assault, battery, and intentional infliction of emotional  
6 distress. (*Id.*) He also sues the Lumbee Tribe, Lumbee Land Development, and Lumbee Tribe  
7 Holdings for negligence, alleging they were on notice of Locklear’s history of aggressive  
8 behavior and alcohol abuse and nevertheless sponsored him to represent the tribe and entities in  
9 Las Vegas. (*Id.* at 6.) Kangarlou brings the lawsuit based on diversity jurisdiction, stating the  
10 Lumbee Tribe “is an unincorporated Indian Tribe and has its principal place of business in the  
11 State of North Carolina.” (*Id.* at 2.) Kangarlou further states Lumbee Land Development and  
12 Lumbee Tribe Holdings are incorporated under the laws of the State of North Carolina and have  
13 their principal place of business in North Carolina. (*Id.*) Kangarlou alleges the amount in  
14 controversy is more than \$75,000, which includes medical bills in excess of \$40,000 and damages  
15 for permanent vision loss in his right eye, spinal cord injury, loss of a tooth, and mental anguish.  
16 (*Id.* at 3.)

### 17 1. Diversity jurisdiction

18 “Federal district courts are courts of limited jurisdiction, possessing only that power  
19 authorized by Constitution and statute.” *K2 Am. Corp. v. Roland Oil & Gas, LLC*, 653 F.3d  
20 1024, 1027 (9th Cir. 2011) (quotation omitted). Federal district courts have original jurisdiction  
21 over civil actions in diversity cases “where the matter in controversy exceeds the sum or value of  
22 \$75,000” and where the matter is between “citizens of different States.” 28 U.S.C. § 1332(a)(1).  
23 “Section 1332 requires complete diversity of citizenship; each of the plaintiffs must be a citizen  
24 of a different state than each of the defendants.” *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061,  
25 1067 (9th Cir. 2001). Federal courts have the jurisdiction to determine their own jurisdiction.  
26 *Special Inv., Inc. v. Aero Air, Inc.*, 360 F.3d 989, 992 (9th Cir. 2004).

27 An unincorporated Indian tribe is not a citizen of any state within the meaning of the  
28 federal diversity statute, § 1332(a)(1), and therefore “cannot sue or be sued in diversity because

1 they are not citizens of any state.” *Am. Vantage Co. v. Table Mountain Rancheria*, 292 F.3d  
2 1091, 1095 (9th Cir. 2002), as amended on denial of reh’g (July 29, 2002). In adopting the  
3 majority view of other courts to have considered this question, the Ninth Circuit explains its  
4 threefold rationale as follows:

5 First, as dependent domestic sovereign nations, Indian tribes are not state citizens.  
6 Second, despite ample opportunity, Congress has not seen fit to confer state  
7 citizenship on Indian tribes. Finally, because our holding is consistent with every  
other circuit to address this issue, we advance the interest of uniformity in a  
uniquely federal area of law.

8 *Id.* Thus, the presence of an unincorporated tribe destroys diversity. *Id.* at 1100; *Ninigret Dev.*  
9 *Corp. v. Narragansett Indian Wetuomuck Hous. Auth.*, 207 F.3d 21, 27 (1st Cir. 2000) (stating  
10 that “a tribe is analogous to a stateless person for jurisdictional purposes” and that  
11 “notwithstanding the joinder of other diverse parties, the presence of an Indian tribe destroys  
12 complete diversity”) (citing 13B Charles Alan Wright et al., *Federal Practice and Procedure* §  
13 3622, at 585–86 (1984)). But an Indian tribe may incorporate, in which case it may have state  
14 citizenship for diversity of citizenship purposes. *Cook v. Avi Casino Enterprises, Inc.*, 548 F.3d  
15 718, 724 (9th Cir. 2008); *Am. Vantage Co.*, 292 F.3d at 1094 n.1.

16 Here, Kangarlou alleges the basis for subject-matter jurisdiction is diversity jurisdiction.  
17 Although he pleads the requisite amount in controversy, there is not complete diversity of the  
18 parties. Specifically, Kangarlou alleges he is a citizen of Nevada and defendant Locklear is a  
19 citizen of North Carolina. He also alleges the tribal corporations, Lumbee Land Development  
20 and Lumbee Tribe Holdings, are citizens of North Carolina. Notwithstanding the fact these  
21 parties are diverse, because Kangarlou joins the Lumbee Tribe, which he alleges is  
22 unincorporated, it destroys complete diversity. In other words, “the parties are not diverse within  
23 the meaning of § 1332(a)(1) because an Indian tribe is not a citizen of any state.” *Am. Vantage*  
24 *Co.*, 292 F.3d at 1094. Given this jurisdictional defect, the court will dismiss Kangarlou’s  
25 complaint with leave to amend.

## 26 2. Amendment

27 If Kangarlou chooses to amend, he must include factual allegations demonstrating  
28 diversity jurisdiction exists, thereby allowing the court to determine its own jurisdiction.

1 Additionally, Kangarlou is advised that if he files an amended complaint, the original complaint  
2 (ECF No. 1-1) no longer serves any function in this case. As such, if plaintiff files an amended  
3 complaint, each claim and the involvement of each defendant must be alleged sufficiently. The  
4 court cannot refer to a prior pleading or to other documents to make plaintiff's amended  
5 complaint complete. The amended complaint must be complete in and of itself without reference  
6 to prior pleadings or to other documents.

7 **II. CONCLUSION**

8 IT IS THEREFORE ORDERED that plaintiff Saeid Sam Kangarlou's motion to proceed  
9 *in forma pauperis* (ECF No. 1) is GRANTED.

10 IT IS FURTHER ORDERED that the clerk of court must detach and separately file  
11 Kangarlou's complaint (ECF No. 1-2).

12 IT FURTHER ORDERED that Kangarlou's complaint is dismissed without prejudice for  
13 failure to plead facts invoking the court's diversity jurisdiction. Kangarlou's deadline to file an  
14 amended complaint is December 13, 2019. Kangarlou is advised that failure to comply with this  
15 order will result in a recommendation to the assigned United States district judge that this case be  
16 dismissed.

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18 DATED: November 13, 2019

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21 BREND A WEKSLER  
22 UNITED STATES MAGISTRATE JUDGE  
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